



Congressman Joe Pitts

Sixteenth Congressional District of Pennsylvania

Memorandum on Health Care

TO: Citizens of the 16th Congressional District of Pennsylvania
FROM: Congressman Joe Pitts
DATE: February 18, 2014
RE: Why Obamacare is Failing and What Should Replace It

Even supporters of Obamacare have had to admit that the rollout of the President's signature legislative accomplishment has been anything but smooth. While Republicans warned all along that a government takeover of the health industry would be a bureaucratic nightmare, there is no reason to gloat.

Health care is the most personal of any political issue. When Congress gets involved in health policy, we are changing peoples' lives. Decisions we make in Washington can have a tremendous effect on the wellbeing of families and their budgets.

A country in which 45 million people went without health insurance was certainly in need of health reform. However, Obamacare is not the health reform this country needed. In fact, I believe it is a tremendous setback and makes true reform even harder to accomplish.

The bitter and divisive debate over the bill and the forceful way it was passed through Congress did lasting damage to our national unity. Massive change to something as important as health care should never have been moved forward over the fervent objections of so many Americans.

The first thing health reform needs to do is stabilize or reduce the costs of health care. The number one complaint people have about health care is its rising cost, and yet Obamacare has done nothing to decrease health care spending. In fact, many Americans are paying more for health insurance and care as a result of the law.

We can do better. Government bureaucracy and rules can never hope to contain costs. We have to make health care costs more transparent and we have to give people the freedom to choose the insurance that they want.

Legislative Malpractice.

President Obama told the American people that health care negotiations would be televised on CSPAN when he was on the campaign trail. However, the ground for Obamacare was laid early in 2009 when the new administration started talking behind

closed doors with insurance companies, pharmaceutical manufacturers, and industry associations. One industry insider characterized the White House message as: “come to the negotiating table or be on the menu.” In other words: support our legislation or face punishing new regulations and taxes. Many of these groups started cutting deals with the administration. Notably, the Pharmaceutical Manufacturers of America (PhRMA) publicly pledged their support for the bill after negotiating a deal with the White House on how much in new taxes the industry would pay.

With Democrats controlling the House and holding a filibuster-proof majority in the Senate, certainly it looked like major legislation was inevitable. What Washington insiders weren't counting on was the reaction of the American people to what amounted to a government takeover of the health industry.

By August of 2009, millions of Americans were engaged in the debate over the health care reform legislation. I myself hosted townhalls where hundreds of constituents came out to make their voices heard. Other Congressmen and Senators across the country also heard from constituents who were concerned about what might happen to their health insurance under the plan.

The House of Representatives narrowly passed a version of health reform in November of 2009. This bill came out of the Energy and Commerce Committee on which I serve. On the House floor, 39 Democrats voted against what was known as “Pelosicare.”

In the Senate, Majority Leader Harry Reid shut down negotiations between Republicans and Democrats on the Finance Committee in the late fall of 2009 and pushed a bill skipping the normal committee process. By cutting deals that became known as the “Cornhusker Kickback” and the “Louisiana Purchase,” he passed a bill without a single Republican vote early in the morning on Christmas Eve.

The reaction against these bills was so strong that a Republican explicitly campaigning against health reform won the Massachusetts special election for the seat vacated by the late Sen. Ted Kennedy. This cost the Democrats their filibuster-proof Senate majority. They could no longer make any changes to the bill without the support of at least one Republican.

Instead of going back to the drawing board and constructing a plan that could garner bipartisan support, Democratic leaders and the White House decided to strongarm reluctant House Democrats into passing the Senate bill despite its many serious faults. Late on a Sunday evening in March, the Affordable Care Act squeaked through the House of Representatives without a single Republican vote, and with 34 Democrats voting no.

The bill that went to the President was concocted by Harry Reid behind closed doors, without any committee consideration, and without any amendment. It passed with only partisan support in both chambers. What was essentially a first draft became the law of the land and began to radically change American health care. That kind of recklessness is what I call “legislative malpractice.”

What is Obamacare?

So what is Obamacare? The text of the bill when we considered it ran to more than 2,000 pages. Nancy Pelosi infamously said we would have to pass the bill to know what was in it. I certainly won't cover every part in detail, but below is a short summary of what most people should know about the law.

Obamacare seeks to expand health insurance coverage through a combination of government mandates, taxes, penalties, and program expansions. At the heart of the law are two mandates: an individual mandate to purchase insurance and an employer mandate to purchase coverage for employees.

No one should forget that President Obama explicitly ran against such mandates in his 2008 race. He mocked fellow Democrat Hillary Clinton in debates saying that her plan: "Forces everyone to buy insurance, even if you can't afford it, and you pay a penalty if you don't."

The law created a penalty on individuals who don't carry health insurance. It grows over time starting at \$96 in 2014, rising to \$325 in 2015, and \$695 a year in 2016. After 2016, the penalty would rise with inflation.

For those the law determines to be "large" employers (those with more than 50 full-time employees), the mandate will force them to provide insurance or pay a \$2,000 fine per employee.

Critically, the law has a host of new regulations about what constitutes insurance. If a plan doesn't meet the government's "essential minimum health benefits," then it doesn't count as insurance and the fine is issued.

Tax Hikes in Obamacare

- \$123 Billion: Surtax on Investment Income* (Took effect Jan. 2013)
- \$86 Billion: Hike in Medicare Payroll Tax* (Took effect Jan. 2013)
- \$65 Billion: Individual Mandate Excise Tax and Employer Mandate Tax* (Both taxes took effect Jan. 2014)
- \$60.1 Billion: Tax on Health Insurers* (Took effect Jan. 2014)
- \$32 Billion: Excise Tax on Comprehensive Health Insurance Plans* (Takes effect Jan. 2018)
- \$23.6 Billion: "Black liquor" tax hike* (Took effect in 2010)
- \$22.2 Billion: Tax on Innovator Drug Companies* (Took effect in 2010)
- \$20 Billion: Tax on Medical Device Manufacturers* (Took effect Jan. 2013)
- \$15.2 Billion: High Medical Bills Tax* (Took effect Jan 1. 2013)
- \$13.2 Billion: Flexible Spending Account Cap* (Took effect Jan. 2013)
- \$5 Billion: Medicine Cabinet Tax* (Took effect Jan. 2011)
- \$4.5 Billion: Elimination of tax deduction for employer-provided retirement Rx drug coverage in coordination with Medicare Part D* (Took effect Jan. 2013)
- \$4.5 Billion: Codification of the "economic substance doctrine"* (Took effect in 2010)
- \$2.7 Billion: Tax on Indoor Tanning Services* (Took effect July 1, 2010)
- \$1.4 Billion: HSA Withdrawal Tax Hike* (Took effect Jan. 2011)
- \$0.6 Billion: \$500,000 Annual Executive Compensation Limit for Health Insurance Executives* (Took effect Jan. 2013)
- \$0.4 Billion: Blue Cross/Blue Shield Tax Hike* (Took effect in 2010)
- \$ Negligible: Excise Tax on Charitable Hospitals* (Took effect in 2010)

Because health insurance is expensive, the government has created a new sliding scale of subsidies that go directly to insurers. Individuals below 400 percent of the poverty line qualify for at least some subsidies. This certainly means that some people will pay less for new coverage, but the way those subsidies are provided is with a host of new taxes on every part of the health care system: drugs, medical devices, and even a tax on the insurers themselves (see sidebar for complete list). These taxes get passed on to every consumer. Essentially the bill creates winners and losers, with the number of losers far outnumbering the winners.

Obamacare also forces people onto welfare by expanding the Medicaid program to people above the poverty line. While the law at first mandated this expansion of a program administered by the states, the Supreme Court ruled that states could opt-out of the expansion and its increased costs.

Why Obamacare Doesn't Work.

There are many problems with the law, both how it is structured and how it is being implemented.

Costs Still Rising. One of the most widely advertised features of the law was “affordability.” Unfortunately, the law actually does little to control the rising cost of health care. The non-partisan Congressional Budget Office maintained that the bill would not bring down health costs in the U.S. Any claims that the bill will save money over the long-term are highly speculative with only left-leaning economists putting out any supporting data.¹

The President claimed that his health plan would save families \$2,500 a year in his first term in office. Now, as the law is being implemented in his second term, people purchasing insurance in the individual market are seeing an average premium increase of 40 percent.² I've heard from some constituents who have seen their premiums double. On top of that, deductibles are increasing by thousands of dollars for many people buying new insurance on government exchanges.

Again, there are some people who are paying less, but only because of government subsidies. The question we need to ask is whether we needed to make health insurance more expensive for many Americans in order to make it more affordable for a few? At the time Obamacare was being debated in Congress, most polls showed that more than 80 percent of Americans were satisfied with their health insurance plan.³ I believe there is a better way.

You Can't Keep Your Health Plan. Obamacare isn't only about getting more Americans health coverage; it is also about telling what kind of health insurance they have to buy.

¹ <http://www.cbo.gov/publication/21670>

² <http://www.forbes.com/sites/theapothecary/2013/11/04/49-state-analysis-obamacare-to-increase-individual-market-premiums-by-avg-of-41-subsidies-flow-to-elderly/>

³ <http://www.politifact.com/truth-o-meter/statements/2010/mar/10/george-will/will-says-95-percent-people-health-insurance-are-s/>

From some of the statements made by the President and leading Democrats, you would think that health insurance was a wholly unregulated industry where anyone could peddle a plan and call it “insurance.” The truth is that health insurance was already heavily regulated by state insurance commissioners. For many years, states have mandated coverage from insurers. In fact, this was a driving factor of cost increases in many states.

Obamacare set new “essential minimum health benefits” that meant insurance companies had to cancel plans for over 5 million Americans. The President repeatedly promised that “If you like it, you can keep it.” The fact checking website Politifact ended up dubbing this the “Lie of the Year” for 2013.⁴ The President, embarrassed by his broken promise, wrote a letter to state insurance commissioners calling on them to allow existing plans to continue for an additional year.

However, some states announced that they would not approve already cancelled plans. Also many insurance companies refused to offer renewals given the weak legal footing provided by the President’s attempted administrative fix.

Millions more Americans could lose their current coverage as small businesses see their current plans cancelled in the coming year.⁵

You Can’t Keep Your Doctor. The President also promised that if you liked your doctor, you would be able to keep seeing him or her. This promise is also as hollow as the last.

Many of the new plans on the Obamacare exchanges severely restrict the doctors and hospitals within their network. In fact, in New Hampshire, where there is only one insurance company offering plans in the exchanges, only 16 of the state’s 26 hospitals are in the network.⁶ This means that some residents may have to drive past multiple hospitals before they get to the one that takes their insurance.

A Broken Website. As Chairman of the Energy and Commerce Health Subcommittee, I personally expressed concerns that the Healthcare.gov website would not be ready for consumers to use on October 1. In the months before the launch, multiple Obama administration officials testified that there would be no problems.

It turned out that things were even worse than I suspected. Most Americans simply couldn’t fill out the online forms to enroll in a health plan. The site constantly crashed under the weight of even a few hundred visitors. It took more than two months before the site was functioning well enough for 90 percent of users to apply for coverage.

Now, even with the consumer side of the website working better, insurers are dealing with a mountain of bad data. The website has transmitted incomplete forms that insurers have to spend time and money correcting.

⁴ <http://www.politifact.com/truth-o-meter/article/2013/dec/12/lie-year-if-you-like-your-health-care-plan-keep-it/>

⁵ http://www.washingtonpost.com/business/on-small-business/next-wave-of-health-plan-cancellations-looming-this-fall-for-small-businesses/2014/01/13/15800dac-7c63-11e3-9556-4a4bf7bcbd84_story.html

⁶ http://www.washingtonpost.com/national/health-science/insurers-restricting-choice-of-doctors-and-hospitals-to-keep-costs-down/2013/11/20/98c84e20-4bb4-11e3-ac54-aa84301ced81_story.html

The federal Healthcare.gov website isn't the only one with severe problems. Various states running their own exchanges have even bigger problems. In Oregon, all applications are being processed by hand. In Maryland, legislators have openly talked about shutting down the state-run site and switching to Healthcare.gov.

Most of these website problems will probably eventually be fixed, but only after significantly more money than was originally budgeted and only after tens of millions of Americans have wasted countless hours online or on the phone trying to get coverage.

Because of the lack of thorough testing, security experts have raised concerns that private information could be lost or stolen. In January, the House of Representatives passed H.R. 3811, the Health Exchange Security and Transparency Act, my bill to require the government to alert individuals about any breach of their information within two business days. The government has a responsibility to protect people from identity theft.

Medicaid Unreformed. Medicaid was created to protect the most needy: pregnant mothers, the disabled, and the poorest Americans. Obamacare expands the program to cover able-bodied adults based only on their income. The expansion strains a program that already struggles to provide effective care to those enrolled right now.

The first major randomized study of Medicaid effectiveness was conducted in Oregon in 2008. It found that individuals enrolled in the program were no healthier than those who had no insurance at all. In fact, in some categories, those who lacked insurance were actually doing better than those enrolled in the program.⁷ We need a Medicaid program that makes a difference in people's lives.

The expansion of the program could double the cost of Medicaid in the state of Pennsylvania from 30 percent of the budget to more than 60 percent.⁸ That would certainly crowd out funding for other priorities such as transportation, education, and public safety. Reform needs to be the priority, not expanding enrollment in government programs.

Fewer Jobs, Fewer Hours. Fewer Americans are in the labor force today than at any time since the 1970s. That is a huge setback for our economy. The unemployment rate has been going down lately, but mostly because many of the unemployed simply gave up looking for jobs.

Obamacare places new obstacles in front of job creators by making it more expensive to hire full-time workers and by changing the traditional definition of part-time work. The law's employer mandate forces every employer with 50 or more workers to provide government-approved insurance.

This employer mandate was supposed to be enforced starting this year. The White House delayed the requirement by a year after loud complaints from big businesses close to the President. The individual mandate deadline remained January 1, 2014.

With Obamacare imposing new costs on some businesses and driving up the cost of insurance for those that already cover their employees, employers are finding it much

⁷ <http://www.nber.org/oregon/>

⁸ <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg67287/html/CHRG-112hhrg67287.htm>

more expensive to hire new workers. Nancy Pelosi claimed that passing Obamacare would create 400,000 jobs immediately and 4 million jobs over a period of years. In reality, it is suppressing employment when we need to see more jobs created.

The non-partisan Congressional Budget Office estimates that the law will reduce the number of jobs created in the United States by 2.5 million over the next ten years. This comes about as a combination of employers offering fewer jobs and workers passing up jobs or working fewer hours because how the new entitlements are structured.⁹

For decades the standard for full-time employment was 40 hours a week. Obamacare, however, defined full-time work as starting above 30 hours. Many businesses that rely on part-timers have cut back hours to comply. In fact, two school districts in our community outsourced part-time employees like cafeteria workers and substitute teachers to avoid new costs.¹⁰

I've heard from many constituents who are struggling to get enough work hours and have had to find a second part-time job to make ends meet. I'm sponsoring legislation that would correct this problem and make Obamacare recognize the standard definition of part-time work.

Better Solutions.

Obamacare is the law of the land, but laws can be repealed. The best way to get good health reform is to completely get rid of the bad. There are certainly things that Republicans and Democrats agree on: allowing children under age 26 to stay on their parent's plan and making sure people with pre-existing conditions have access to health care. Those are things we can move forward together, before we have to work through more substantive reforms.

I do not believe that more government bureaucracy, regulations, and spending will ever successfully control the price of health care. We have to put individuals and families in charge of their own health care. They need to have the information they need to make smart decisions and the freedom to choose what works best for them. Here are just some of the free market solutions that I believe would truly help control costs and improve health care for all.

Risk Pooling. Before Obamacare was even talked about, I introduced the Small Business CHOICE Act, which would allow small businesses to form private health insurance cooperatives to buy insurance at lower rates while transferring catastrophic costs to a larger insurer. The bill helps small employers offer health insurance through a refundable tax credit of 65 percent. Self-employed people would save \$5,000 a year on health insurance, and other small firms would save more than 34 percent.

⁹ <http://www.cbo.gov/publication/45010>

¹⁰ http://lancasteronline.com/elanco/news/elanco-assesses-impact-of-affordable-care-act/article_7448708c-8cf7-11e3-b6d2-0017a43b2370.html

Association Health Plans. Another way to accomplish risk pooling is through association health plans (AHPs). Republicans have long advocated allowing Rotary clubs, professional associations and other groups to band together across state lines and form their own health plans, reducing prices through increased scale and shared risk.

Encourage Innovation. We should never forget that innovation comes almost exclusively from the private sector. New drugs, therapies, and cures will only be developed if the companies that develop them are able to make a profit from them. We should not nationalize healthcare and we should not weigh down innovation and invention with unnecessary new taxes and regulations.

Wise Regulation. Clearly, we need regulatory reform as well. Insurance companies should not be allowed to drop people's policies for arbitrary and capricious reasons. Those who have pre-existing conditions should not be barred from obtaining coverage. Doctors should not be overruled by insurance companies when determining the care patients need. At the same time, we need to recognize that the more we regulate doctors, hospitals, and insurance companies the more we increase their costs. Those costs are always passed on to the consumer.

Litigation Reform. While we need new rules for insurance companies, we also need new rules for lawyers. Unscrupulous attorneys have discovered how to become multimillionaires by trolling the country for "victims" who may not even be sick. Settlements or jury awards in class-action suits often result in millions for lawyers and only a few dollars or even just store coupons for those they represent. This problem extends beyond health insurance, but has hit physicians and hospitals particularly hard. Malpractice insurance policies for individual doctors now cost in excess of \$200,000 per year for obstetricians and many other specialists. Patients ultimately foot the bill for this.

Consumer Control. In no other sector of our economy do consumers have less active involvement in major purchases. Today, consumers have almost no ability to reward insurance companies for providing good service for less money, nor do they have the ability to punish insurance companies by "taking their business elsewhere." Employers make most of the contracting decisions, placing individuals in a "take it or leave it" situation. Putting consumers in control of purchasing decisions will allow the market to work the way it should, driving down prices. Real health reform will give individuals the same tax benefits corporations get when it comes to purchasing insurance--giving them the power they, as consumers, should have.

Portability. Another effect of this is that insurance is too-closely tied to employment. People who are laid-off, fired, or have to quit working can find themselves uninsured at a time when they can least afford it. Americans should be able to own their insurance plan, take their insurance with them from one job to another and from one state to another.

Nationwide Competition. Consumers should be allowed to purchase health insurance across state lines, the way they can with other forms of insurance. Under the present system, insurance plans operate only within states or even just areas within states, not nationally, frequently facing little or no competition. In some areas, one insurance plan holds 90 percent of the market. This distorts the marketplace, removing the incentives to

be efficient and customer-oriented that robust competition creates. It is essential that we prevent consumers from being trapped in their own state.

Health Savings Accounts. Lack of consumer control also has the effect of reducing people's motivation to make their own responsible decisions. There is little incentive to make wise decisions about when to see a doctor or to make healthy lifestyle choices. Instead, insurance companies try to reduce costs by requiring doctor referrals and insurance pre-certification. A better way to help people to make responsible decisions is to transfer the motivation to be frugal from the insurance company to the individual. Health Savings Accounts, created in 2003 by Republicans but still under-used, allow individuals to save money in an account they control, using the money to pay for everyday medical expenses. Only when major medical expenses are incurred does the insurance company step in, after a high deductible (paid out of the HSA) is met. HSAs encourage individuals to make smart spending decisions and cost them less over time than traditional insurance.

The Unaffordable Care Act.

The Affordable Care Act is anything but affordable. The bill was sold to the American people with the promise it would save families \$2,500 a year. The legislation was moved through Congress with the promise it would reduce the deficit. Both of these claims were fiction.

Today, many families are paying much more for care. Today, the promised budget savings of the law have evaporated as the accounting gimmicks and hidden costs were revealed. Indeed, the Government Accountability Office projects the law could add \$6.2 trillion to the deficit over the next 75 years.¹¹

Already, we are hearing new calls from liberals for government to complete the takeover of health care and institute a single-payer system. More and more government control will never be the answer. Obamacare's failures demonstrate that even the smartest people in Washington can never effectively manage a system as complex as health care.

Frankly, I don't think American families should have to worry about Washington when they make critical decisions about health care. No one should come between you and your doctor.

Few people get stressed out buying insurance for their car or their home. They look at the options, look at their budget, and choose a product that fits their needs. Companies compete for consumers in a relatively free market. If you're unsatisfied with your car insurance, you cancel your plan and find another. It should be the same way with health insurance.

As Chairman of the Health Subcommittee, I am focused on getting good reform passed. While the best way to move forward is to repeal Obamacare, I'm not going to wait until that time to consider legislation that makes care more affordable, more accessible, and puts patients and doctors in control.

We can do much better than Obamacare.

¹¹ <http://www.gao.gov/products/GAO-13-281>